

**§ 458.82 Motions after a hearing.**

All motions made after the transfer of the case to the Assistant Secretary, except motions to correct the record under § 458.76(l), shall be made in writing to the Assistant Secretary. The moving party shall serve a copy of all motion papers on all other parties. A statement of service shall accompany the motion. Answers, if any, must be served on all parties and the original thereof, together with a statement of service, shall be filed with the Assistant Secretary after the hearing, within seven (7) days after service of the moving papers unless it is otherwise directed.

**§ 458.83 Waiver of objections.**

Any objection not duly urged before an Administrative Law Judge shall be deemed waived.

**§ 458.84 Oral argument at the hearing.**

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

**§ 458.85 Transcript.**

An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will be provided to the parties, in accordance with the provisions of part 70 of this title, or they may be examined in the district office in whose geographic jurisdiction the hearing has been held.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 63 FR 33780, June 19, 1998]

**§ 458.86 Filing of brief.**

Any party desiring to submit a brief to the Administrative Law Judge shall file the original within ten (10) days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause, the Administrative Law Judge may grant a reasonable extension of time. Copies of such brief shall be served on all of the parties to the proceeding. Requests for additional time in which to file a brief under authority of this section made after the hearing shall be made in writ-

ing to the Administrative Law Judge and copies thereof served on the other parties. A statement of such service shall be furnished. A request for extension of time shall be received not later than three (3) days before the date such briefs are due. In the absence of the Administrative Law Judge such requests shall be ruled upon by the Chief Administrative Law Judge. No reply brief may be filed except by permission of the Administrative Law Judge.

**§ 458.87 Proposed findings and conclusions.**

Within fifteen (15) days following the close of the hearing, the parties may submit proposed findings and conclusions to the Administrative Law Judge, together with supporting reasons therefor, which shall become part of the record.

**§ 458.88 Submission of the Administrative Law Judge's recommended decision and order to the Assistant Secretary; exceptions.**

(a) After the close of the hearing, and the receipt of briefs, or findings and conclusions, if any, the Administrative Law Judge shall prepare his recommended decision and order expeditiously. The recommended decision and order shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and recommendations as to the disposition of the case including the remedial action to be taken.

(b) The Administrative Law Judge shall cause his recommended decision and order to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transfer the case to the Assistant Secretary including his recommended decision and order and the record. The record shall include the complaint, the notice of hearing, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, exhibits, documentary evidence and any briefs or other documents submitted by the parties.

(c) Exceptions to the Administrative Law Judge's recommended decision and order may be filed by any party with the Assistant Secretary within fifteen

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(15) days after service of the recommended decision and order: *Provided, however*, That the Assistant Secretary may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Assistant Secretary.

#### § 458.89 Contents of exceptions to Administrative Law Judge's recommended decision and order.

(a) Exceptions to an Administrative Law Judge's recommended decision and order shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Administrative Law Judge's recommended decision and order to which objection is made;

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

#### § 458.90 Briefs in support of exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued;

(3) The argument, presenting clearly the points of fact and law relied on in

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support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Answering briefs to the exceptions may be filed with the Assistant Secretary within ten (10) days after service of the exceptions.

#### § 458.91 Action by the Assistant Secretary.

(a) After considering the Administrative Law Judge's recommended decision and order, the record, and any exceptions filed, the Assistant Secretary shall issue his decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as he deems appropriate: *Provided, however*, That unless exceptions are filed which are timely and in accordance with § 458.89, the Assistant Secretary may, at his discretion, adopt without discussion the recommended decision and order of the Administrative Law Judge, in which event the findings, conclusions, and recommendations of the Administrative Law Judge, as contained in his recommended decision and order, shall, upon appropriate notice to the parties, automatically become the decision of the Assistant Secretary.

(b) Upon finding a violation of the CSRA, FSA or this part, the Assistant Secretary may order the respondent to cease and desist from such violative conduct and may require the respondent to take such affirmative action as he deems appropriate to effectuate the policies of the CSRA or FSA.

(c) Upon finding no violation of the CSRA, FSA or this part, the Assistant Secretary shall dismiss the complaint.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, Aug. 1, 1985]

#### § 458.92 Compliance with decisions and orders of the Assistant Secretary.

When remedial action is ordered, the respondent shall report to the Assistant Secretary, within a specified period, that the required remedial action has been effected. When the Assistant Secretary finds that the required remedial action has not been effected, he shall refer the matter for appropriate action to the Federal Labor Relations